

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SECOND APPEAL NO. 102 OF 1993****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the Civil Judge?

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KESHAVALAL FUSABHAI PARMAR - Appellant(s)

Versus

UNION OF INDIA - Respondent(s)

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Appearance :

MRS. SANGEETA N. PAHWA for Appellant(s).
None for Respondent though served.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 16/01/2007

ORAL JUDGMENT

1. The present appellant, who was working as a Sepoy-cum-Rakshak with the respondent, was charge-sheeted with the allegation that he was wearing plain clothes on

duty and was using filthy language against the SIPF; an inquiry was conducted and the plaintiff was served with an order dated 17th February, 1983 terminating his services.

1.1 The plaintiff preferred an appeal before the Authorities and on that being proved futile, he had filed Civil Suit No.951 of 1984. It was submitted by the plaintiff that he has been illegally removed from the services. The procedure during the course of the inquiry was illegal and in any case, the punishment was absolutely disproportionate and shocking to the conscience.

1.2 The defence of the respondent was that there was no illegality in the inquiry and in any case, the punishment was not disproportionate because no subordinate staff can be allowed to use abusive or filthy language with his senior.

1.3 The learned trial Court, however, decreed the suit, but, refused the back-wages. It held that the punishment was absolutely disproportionate to the misconduct and the same required reconsideration. While remitting the matter to the Disciplinary Authority, the

learned trial Court, however, observed that present is a case for refusal of the back-wages.

2. As the appeal at the instance of the appellant proved futile, he has filed the present Second Appeal, which has been admitted for hearing the parties on the following substantial question of law:

"In what circumstances, back-wages should be denied to an employee once the order of his removal from service is set aside?"

As the question is too wide in its import, I would reframe the same as under:

Whether on the facts and in the circumstances of the case, the learned Courts below were justified in holding that back-wages could be denied to the plaintiff though they were of the opinion that removal of the plaintiff from services was bad?

3. Mrs. Pahwa, learned Counsel for the appellant, submits that the judgement and decree passed by the two Courts below are patently illegal because while denying the back-wages, no reasons have been assigned by them. She also submits that as the question of punishment was to be reconsidered by the Disciplinary Authority, the

question of back-wages could not be decided by the Civil Court. According to her, once the punishment order is set aside and the Disciplinary Authority is required to reconsider the question of award of punishment, then, the question of back-wages should be left open to be decided by the Disciplinary Authority.

4. None appears for the respondent though served.

5. In the opinion of this Court, the contention raised by Mrs.Pahwa must be upheld. Once the learned trial Court was of the opinion that the punishment of removal awarded to the plaintiff was disproportionate and the Court was requiring the Disciplinary Authority to redetermine the question of award of punishment, then, the question of back-wages could not be decided by the Court because the question of award of back-wages would be a part of award of punishment. I, accordingly, answer the question in favour of the appellant-plaintiff.

6. The directions issued by the two Courts in relation to back-wages, being contrary to the settled norms of law, are hereby set aside. The suit is decreed. The appeal is allowed. It is hereby ordered that if the appellant makes an application to the Disciplinary

Authority in relation to grant of back-wages, then, the said application shall be decided by the said Authority in accordance with law. No costs. Let a decree be framed accordingly.

[R.S.Garg, J.]

*kamlesh**